

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1737 of 2006

WITH

CRIMINAL MISC. APPLICATION NO. 10328 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

JAYANTIBHAI KHANABHAI VANKAR - Appellant

Versus

THE STATE OF GUJARAT - Opponent

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Appearance :

MR SV RAJU WITH MR JAYPRAKASH UMOT for

Appellant.

MR KT DAVE, APP for Respondent.

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CORAM : HONOURABLE MR.JUSTICE
A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The appellant - orig. accused has filed this appeal under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order dated 17.07.2006 passed by the learned Additional Sessions Judge, 4th Fast Track Court, Panchmahals at Godhra in Sessions Case No.14 of 2006 wherein the appellant has been convicted for the offence punishable under Section 498-A and 307 of the Indian Penal Code. The appellant - accused was sentenced to R.I. of one year and fine of Rs.500/- and

in default thereof, to undergo S.I. of three months for an offence punishable under Section 498-A of the Code. The appellant - accused was also sentenced to R.I. of 10 years and fine of Rs.21,000/- and in default thereof, to undergo S.I. of one year. Both the sentences were ordered to be undergone by the appellant simultaneously. The learned Sessions Judge has also held that out of fine of Rs.21,000/- that has been imposed, if the said amount is paid by the appellant, a sum of Rs.20,000/- was ordered to be paid to the victim.

2. The case of the prosecution as revealed from the complaint and unfolded during the course of trial, is that one Mr. Moghabhai Kalubhai Vankar, the father of the victim has filed the complaint against the present appellant - accused stating therein that his daughter got married with the appellant - accused and after her marriage, she has been working as a Nurse in a private hospital, namely, Shraddha Hospital at Lunavada. Her husband Jayantibhai Khanabhai Vankar, her father-in-law Khanabhai

Dholabhai and her mother-in-law Kesarben were beating her physically for about last one year by saying “you are not serving and you are characterless and you are having illicit relation at Lunavada” and thereby were giving harassment mentally. His daughter, being displeased, was coming to his place frequently and he was sending her back to her in-laws after persuading her. It is also the case of the prosecution that on 25.09.2005, Khanabhai Nathabhai Vankar, a resident of Motipalli sent a message at about 1.00 O'clock in the afternoon that his daughter has received burn injuries at her in-laws and she has been taken to a hospital. On receiving the said message, his two brothers Devabhai Kalubhai and Lebabhai Kalubhai and his son Babubhai, one Dhulabhai Parmabhai of his street and other persons with him went to the village Motipalli in a passenger rickshaw. On inquiry, they came to know that his daughter has been admitted in a Civil Hospital, Vadodara. So, they came to Lunavada from Motipalli and hired a Jeep and went to the Civil Hospital at Vadodara. On

making inquiry in the Civil Hospital, they came to know that his daughter was admitted in the burns ward. He has seen that her daughter was burnt on the chest and on both hands and thighs. Upon asking his daughter in presence of the aforesaid persons with him, she said "yesterday i.e. 24.09.2005, my husband quarreled with me in the night and said that you are having illicit relation in your service at Lunavada." He has beaten me by quarrelling. As I was to go on my duty, I got up early in the morning and was preparing food on a fire place. At that time, my husband also got up early at about 7.00 O' clock in the morning and quarreled with me again." He said to me that "you have not to go on service. You are going for illicit relation on duty" and by keeping doubt wrongly, he quarreled with me and beaten me by giving abuses. He also said me that "today I am not going to leave you" and by saying so, he lifted me near the fire place and threw me in the burning fire place with an intent to kill. The clothes put on by me were fired and as I was shouting, my husband pulled out my Sari and he

also received burns on his both hands. My in-laws told me yesterday that if you state against us, you will not be given treatment and thereby forced me and so I did not tell the aforesaid fact to any one.” The complainant's daughter stated the aforesaid fact to the complainant. Thus, complainant's son-in-law Jayantibhai Khanabhai Vankar doubted the character of his daughter who was serving as a Nurse in a private hospital. He lifted his daughter and threw her in the fire place with an intent to kill her whereby his daughter burnt on the chest and on both the thighs and both the hands. Therefore, he lodged the aforesaid complaint against his son-in-law before D.S.P., Lunavada on 26.09.2005. The said complaint is registered as I-C.R. No. 76/2005.

3. Pursuant to the registration of the offence, the investigation was put into motion. During the course of investigation, statements of the witnesses were recorded, and since sufficient incriminating evidence was found against the appellant – original accused, he was charge-sheeted in the Court of learned

Judicial Magistrate First Class. As the offence punishable under Section 498-A & 307 of IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate committed the case to the Sessions Court, Panchmahals at Godhra.

4. The learned Additional Sessions Judge, Panchmahals at Godhra to whom the case was made over for trial, framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Thereupon he was put to trial and tried by the learned Additional Sessions Judge, Panchmahals at Godhra, in Sessions Case No. 14 of 2006.

5. To prove the culpability of the accused, the prosecution has examined as many as 15 witnesses and relied upon their oral testimony, details of which are given as under :-

Sr. No.	Exh. No.	Particulars	Page Nos.
01.	14	P.W. 1 - Dayalbhai Dhulabhai Vankar.	75-77

Sr. No.	Exh. No.	Particulars	Page Nos.
02.	20	P.W. 2 - Madhuben Moghabhai Vankar.	89-100
03.	23	P.W. 3 - Moghabhai Kalubhai Vankar.	101-106
04.	24	P.W. 4 - Dhulabhai Parmabhai Vankar.	113-116
05.	25	P.W. 5 - Rajendrasinh Ajitsinh Solanki	117-118
06.	26	P.W. 6 - Dahyabhai Ganeshbhai Vankar.	119-120
07.	28	P.W. 7 - Hiralben Jayantibhai Vankar.	123-126
08.	29	P.W. 8 - Prabhatsinh Balwantsinh Patel.	127-130
09.	32	P.W. 9 - Manojsinh Natwarsinh Chavda.	135-136
10.	34	P.W. 10 - Chandubhai Nagjibhai Pargi.	139-142
11.	36	P.W. 11 - Jaswantkumar Ramjibhai Mothaliya.	145-148
12.	39	P.W. 12 - Himatsinh Chhelabhai Chauhan.	153-156
13.	44	P.W. 13 - Nishitkumar Bhupendrakumar	165-168
14.	51	P.W. 14 - Dr. Nehaben Hitendra Sheth.	181-186
15.	52	P.W. 15 - Madansinh Dulesinh Punwar.	187-192

6. To prove the charge levelled against the accused, the prosecution has also produced number of documents and relied upon the contents of the same, details of which are given as under:-

Sr. No.	Exh. No.	Type of Evidence	Page Nos.
01.	3	Charage	21-24
02.	9	Panchnama	63-66
03.	10	Panchnama	67-68
04.	11	Dying Declaration of Madhuben.	69-70
05.	12	Medical Certificate of Madhuben.	71-72
06.	13	Medical Certificate of Jayantibhai.	73-74
07.	15.	Panchnama	79-80
08.	16.	Panchnama	81-82
09.	22	Original complaint.	107-110
10.	35	Primary Report.	143-144
11.	57	F.S.L. Report	203-204

7. After recording of the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge, Panchmahals at Godhra explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement under Section 313 of the Code. In his further statement the accused denied the case of the prosecution in toto and stated that he has been roped in the false case under Section 498-A & 307 of IPC.

8. On appreciation, evaluation, analysis and scrutiny of

the evidence on record, the learned Additional Sessions Judge, Panchmahals at Godhra has held that the accused has committed an offence under Sections 498-A & 307 of IPC and awarded the sentence as indicated above. It is this judgment and order, which is now on anvil of scrutiny of this Court in this Appeal, filed at the instance of the accused.

9. Mr. S.V. Raju, learned advocate appearing with Mr. Jayprakash Umot for the appellant has submitted that the learned Additional Sessions Judge has grievously erred in convicting the appellant for an offence punishable under Section 498-A of the IPC and consequently sentencing him to R.I. for one year and imposing a fine of Rs. 500/-. The learned Additional Sessions Judge has equally erred in convicting the appellant for an offence punishable under Section 307 of IPC and consequently sentencing him to R.I. for 10 years and imposing a fine of Rs. 21,000/-. He has further submitted that the learned Additional Sessions Judge has erroneously come to the conclusion that the

prosecution has proved its case beyond reasonable doubt that on 25.09.2005 at about 7.00 O'clock in the morning, when the victim was cooking in the kitchen, the appellant quarreled with her about her service as a Nurse in Shraddha Hospital and thereafter the appellant lifted the victim and threw into the burning Chula causing graveous injuries to the victim. The reason behind the said quarrel was that the appellant had doubt that the victim was having illicit relation with someone and because of that the appellant was giving mental and physical harassment to the victim.

10.Mr. Raju has further submitted that the learned Additional Sessions Judge has failed to appreciate the deposition of P.W. 1 - Dayalbai Dhulabhai Vankar at Exh. 14, one of the panchas of body panchnama of the accused. This witness has deposed that the appellant had received burn injuries on fingers of both his hands. He has further deposed that the married life of the victim and the appellant was going well and there were no disputes

between them and on the date of incident, the victim told him that she had received burn injuries while cooking. P.W. 2 – Madhuben Moghabhai Vankar, the victim in her deposition at Exh. 20 had deposed that in the aforesaid incident, the accused had also received burn injuries while trying to save her. This witness has also deposed that immediately after the incident, she was taken to hospital by her in-laws. It was further deposed that from the time of incident till she was taken to Vadodara hospital, her husband was with her. She has further deposed that during the treatment when blood was required, her in-laws arranged 8 bottles blood for her and all expenses were borne by her in-laws. He has further submitted that P.W. 4 - Dhulabhai Parmabhai Vankar, Exh. 24 has turned hostile and he has not supported the case of the prosecution. P.W. 5 – Rajendrasinh Ajitsinh Solanki who is the driver of Maruti Van in which the victim was taken to hospital has stated in his deposition at Exh. 25 that he came to know that the incident has taken place accidentally. Likewise, P.W. 12 - Himmatsinh Chhelabhai Chauhan, A.S.I.,

Raipura Police Station, Vadodara, in his deposition at Exh. 39 has deposed that it is stated in the Vardhi at Exh. 40 that the victim had received burn injuries as the edge of her Sari caught fire from Chula. P.W. 14 - Dr. Neha H. Sheth in her deposition at Exh. 51 had deposed that on asking the case history, the victim told her that she received burn injuries as the edge of her Sari caught fire from Chula. This witness has further deposed that the injuries received by the victim can be caused if the edge of her Sari caught fire from Chula and the injuries caused to the accused can also be caused if he had tried to save the victim.

11.Mr. Raju has further submitted that the medical evidence disclosed that none of the injuries were cumulatively dangerous to the life of the injured person. The requirement of Section 307 of IPC is that the act must be done with such an intention or knowledge or under such circumstances that if the death be caused by that act, the offence of murder would be held to be committed. It is pertinent to

note that in the present case, the medical evidence showed that none of the injuries were cumulatively dangerous to the life of the injured person and, therefore, there was no intention to cause death and accordingly, the appellant should be exculpated from the charge under Section 307 of IPC. He has further submitted that if an injury inflicted on the victim is not sufficient in the ordinary course of nature to cause death, then Section 307 of IPC is not attracted. To sustain conviction under Section 307 of IPC, it is necessary that there must be an act done under such circumstances as death might be caused if the act took effect. The act must be capable of causing death in the natural and ordinary course of thing, and if the act complained of is not of that description, the assailant cannot be committed of an attempt to commit murder under Section 307 of IPC. It is crystal clear from the nature of injuries that it was not an intention of the accused nor he had knowledge that it was likely to cause death. For the purpose of Section 307 of IPC, what is material is the intention or knowledge and not the consequence of

the actual act done for the purpose of carrying out the intention. He has, therefore, submitted that the appellant is not guilty under Section 307 of IPC and, therefore, the appellant deserves to be acquitted.

12.Mr. Raju has further submitted that to constitute an offence under Section 307 of IPC, following two ingredients of the offence must be present - (a) intention of or knowledge relating to commission of murder and (b) the doing of an act towards it. For the purpose of Section 307 of IPC, what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. If the accused was having the intention to kill the victim, then the accused could give the repeated blows on the head of the victim because as per the case of the prosecution itself, no one had intervened for saving the victim from further assault and no one had caught the accused and, therefore, it is crystal clear from these circumstances that the appellant was not having any intention or knowledge relating to

commission of murder of the victim. The dying declaration given by the victim Madhuben on 29.05.2005 at Exh. 11 before the Executive Magistrate, Vadodara in which it is stated that the victim had received burn injuries as the edge of her Sari caught fire from Chula and there is no harassment by husband or in-laws and this incident occurred naturally and while trying to save her life, her husband also received burn injuries. Mr. Raju has, therefore, urged that the appeal filed by the appellant deserves to be allowed by quashing and setting aside the impugned judgment and order of the conviction and sentence.

13.Mr. K.T. Dave, learned Additional Public Prosecutor appearing for the respondent - State of Gujarat, on the other hand, has supported the judgment and order of the learned Additional Sessions Judge, Panchmahals at Godhra. He has submitted that the prosecution has proved beyond reasonable doubt that the appellant - accused has committed an offence punishable under Section 498-A & 307 of

IPC and, therefore, the learned Additional Sessions Judge, Panchmahals at Godhra has rightly punished the appellant. To cast aspersion by husband on the chastity of the wife is amounting to a cruelty within the meaning of Section 498-A and just to get rid of the wife, to make an attempt to kill her, is considered to be an offence within the meaning of Section 307 of IPC. In the complaint by the complainant as well as in the deposition before the Court by the victim, it is clearly established that the appellant has lifted the victim and threw her on Chula because of which she got burn injury. The intention was very obvious to kill her and hence, the provisions of Section 307 were clearly attracted in the present case. He has, therefore, submitted that since the learned Trial Judge has passed the impugned judgment after proper and careful appreciation of oral as well as documentary evidence, no interference is called for while deciding this appeal under Section 374 of the Code of Criminal Procedure.

14. We have considered the submissions advanced by Mr. S.V. Raju, learned advocate appearing for the appellant - original accused and Mr. K.T. Dave, learned APP for the respondent - State of Gujarat. We have also perused the impugned judgment and order. We have also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

15. After threadbare examination of the evidence of the prosecution witnesses, on reappreciation, reanalysis, reevaluation, and close scrutiny of the evidence, the undisputed facts which have come on record in the form of evidence and the salient features of the prosecution case, are now as under :-

- I. The alleged incident took place at about 7.00 O'clock in the morning on 25.09.2005 when the victim was preparing food near the fire place.

II. The victim got burn injuries and while saving the victim, the appellant has also got some burn injuries on his hands.

III. The victim was taken to the Hospital by her husband as well as her in-laws and they have managed for 8 bottles of blood and also incurred expenses for her medical treatment.

IV. The victim in her first dying declaration has talked about incident being of an accident. The discrepancies were also found in the evidence of other witnesses. The medical evidence also supports the case that it was of an accident.

V. The victim in her deposition Exh. 20 has stated that when edge of her Sari caught fire at the fire place, she shouted and her husband immediately came out and pulled out her burnt Sari. When the victim fell down, her elder sister-in-law immediately ran to the place of incident and she put the clothes on her. She has further deposed that she was taken to hospital.

She has admitted that she has given her dying declaration before the Executive Magistrate. She has also admitted that her husband was injured due to this fire while saving her.

VI.Dhulabhai Parmabhai Vankar - Exh. 24 is a neighbour and he turned hostile. Likewise, Rajendrasinh Ajitsinh Solanki Exh. 25 is a driver of Maruti Van GJ-9-B-8680 and he has admitted that the victim has got burn injuries because of the accident.

16.In light of the aforesaid facts and evidence, the question which calls for determination of this Court in this appeal is as to whether the prosecution has successfully established that the accused has committed an offence punishable under Section 498-A and 307 of IPC. It is true that the victim before the Court has given some what contradictory version, but based on this, the appellant cannot be convicted and it cannot be said that the charge levelled against him is successfully proved. The fact that the appellant has tried to save the victim and

further fact that the in-laws of the victim have taken the victim to the hospital and provided all necessary treatment undisputedly indicates that there was no such intention to cause death of the victim. The Medical Officer has also recorded the case history wherein the victim has stated that she got burn injuries because the edge of her Sari was caught by fire and that her husband has tried to save her. The medical evidence further states that none of the injuries were cumulatively dangerous to the life of the injured person. The Court, therefore, finds sufficient substance in the submission of Mr. Raju that requirement of Section 307 of IPC is not fulfilled and it is not the act which was done with an intention or knowledge to cause death of the victim. The essential ingredients of Section 307 of the Act are not positively proved. In the present case, there was neither an intention or knowledge relating to commission of murder nor the accused has done any act towards it. It is true that the victim has got some burn injuries but this fact by itself would not conclusively prove that the appellant had intention

or knowledge to cause death of the victim. It is well established principle of law that what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. Considering the entire facts and circumstances of the case, we are of the view that the learned Additional Sessions Judge has committed an error while convicting the accused for an offence punishable under Section 498-A and 307 of IPC.

17. Before parting, we would like to refer one important aspect of the matter which has also helped us in arriving at this conclusion. We have called the appellant and the victim in the Court. The appellant has expressed his willingness and desire to accept the victim and to live happy and peaceful married life with her. Similarly, the victim has also agreed to go along with the appellant. The appellant's father and brother as well as victim's brother and other relatives as well as some reputed persons from their village are also present in the Court. By virtue of

this development, if there is a possibility of re-union amongst the husband and wife and since both of them have expressed their desire before the Court, we are of the view that this is an additional point which the Court cannot ignore while deciding the appeal on merits and gives its finding of acquittal.

18. For the foregoing reasons, the judgment and order of conviction dated 17.07.2006 recorded against the appellant for the offence punishable under Sections 498-A & 307 of IPC by the learned Additional Sessions Judge, Panchmahals at Godhra in Sessions Case No. 14 of 2006 is hereby quashed and set aside. This appeal is hereby allowed. The respondent - State of Gujarat and jail authorities are hereby directed to release the appellant forthwith, if his presence is not required in relation to any other offence.

19. In view of the order passed in this appeal, Cri. Misc. Application No. 10328 of 2006 for bail does not survive and it is accordingly disposed of as having no

survival value.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya